Quality Color Graphics, Inc. and American Heatset East Printing, Inc. *and* Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO and Local 72, National Organization of Industrial Trade Unions, Party in Interest. Cases 29–CA–23136 and 29–CA–23164

April 12, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Upon a charge filed by Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO (Local One) in Case 29–CA–23136 on November 19, 1999, and a charge filed by Local One in Case 29–CA–23164 on December 2, 1999, the General Counsel of the National Labor Relations Board issued a consolidated complaint (the complaint) on January 26, 2000, against Quality Color Graphics, Inc. and American Heatset East Printing, Inc., the Respondents, a single employer, alleging that they have violated Section 8(a)(1), (2), and (5) of the National Labor Relations Act. Although properly served copies of the charges and the complaint, the Respondents failed to file an answer.

On March 10, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On March 14, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

In the absence of good cause being shown for the Respondents' failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, until on about November 19, 1999, Respondent Quality Color Graphics, Inc. (Respondent Quality), a New York corporation with its principal office and place of business located at 31 Crossways East, Bohemia, New York (the Bohemia facility), was engaged in the printing business. During the 12-month period ending on about November 19, 1999, Respondent Quality, in the course and conduct of its business operations described above, provided services valued in excess of $50,000 to customers located within the State of New York, which customers met a direct test for the assertion of jurisdiction. We find that at all material times Respondent Quality has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent American Heatset East Printing, Inc. (Respondent American), a New York corporation with its principal office and place of business located at the Bohemia facility, has been engaged in the printing business. During the 12-month period preceding issuance of the complaint, which period is representative of its annual operations in general, Respondent American, in the course and conduct of its business operations described above, provided services valued in excess of $50,000 to customers located within the State of New York, which customers meet a direct test for the assertion of jurisdiction. We find that at all material times Respondent American has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that, at all material times, Local One has been a labor organization within the meaning of Section 2(5) of the Act. In addition, we find that at all material times, Local 72, National Organization of Industrial Trade Unions (Local 72), has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Respondent Quality and Respondent American have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single-integrated business enterprise. Based on their operations described above, we find that Respondent Quality and Respondent American constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

At all material times, Paul A. Pappas (Pappas) has held the positions of president of Respondent Quality and president of Respondent American, and has been an agent of the Respondents acting on their behalf.

The following employees of the Respondents (the unit) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

Since about 1995, Local One has been the certified collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondents. This recognition has been embodied in a series of collective-bargaining agreements between Local One and Respondent Quality, the most recent of which is effective by its terms for the period September 30, 1998, to June 30, 2002.

At all material times, Local One, by virtue of Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the employees in the unit, for the purposes of collective bargaining.

The 1998–2002 collective-bargaining agreement described above contains provisions, set forth in section 5, which require Respondent Quality to deduct union dues and fees from the wages of the employees in the unit, pursuant to valid dues-checkoff authorizations, and to remit those dues to Local One.

The 1998–2002 collective-bargaining agreement also contains provisions, set forth in sections 16 and 17, which require Respondent Quality to make monthly contributions to both Local One's Pension Fund and the ALA Lithographic Industry Pension Plan, respectively (herein collectively the Pension Funds), on behalf of the unit.

Further, the 1998–2002 collective-bargaining agreement contains provisions, set forth in sections 18 and 19, which require Respondent Quality to provide and maintain health insurance and dental benefits for its employees in the unit.

Since a presently unknown date in October 1999, the Respondents have failed and refused to (1) deduct and remit the union dues and fees from the wages of unit employees pursuant to valid dues-checkoff authorizations; (2) make the required monthly contributions to the Pension Funds on behalf of the unit; and (3) provide and maintain health insurance and dental benefits for its employees in the unit.

On about November 18, 1999, the Respondents, by Pappas, at the Bohemia facility, distributed a memo to the unit employees informing them that Respondent Quality would be ceasing its operations effective November 19, 1999, and that Respondent American would be offering them employment.

On about November 18, 1999, the Respondents, by Pappas, at the Bohemia facility, rendered assistance and support to Local 72 by distributing a memo informing unit employees that they would be terminated unless they joined Local 72, with whom Respondent American has a collective-bargaining agreement.

On about November 19, 1999, the Respondents withdrew their recognition of Local One as the exclusive collective-bargaining representative of the unit.

Since on about November 19, 1999, the employees in the unit have continued to perform the same work at the Bohemia facility; have continued to work under the same supervision; have continued to work for the same customers; and have continued to use the same supplies provided by the same suppliers, as they did before the closing of the operation of Respondent Quality.

On about November 22, 1999, the Respondents, by Pappas, at the Bohemia facility, rendered assistance and support to Local 72 by informing unit employees that they would be terminated unless they joined Local 72.

On a date in early December 1999, the precise date being presently unknown, the Respondents, by Pappas, at the Bohemia facility, rendered assistance and support to Local 72 by informing the unit employees that they would be terminated unless they joined Local 72.

The deduction of union dues and fees, the contributions to the Pension Funds, and the providing and maintenance of health insurance and dental benefits plans described above relate to wages, hours, and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

1. By informing unit employees in November and December 1999 that they would be terminated unless they joined Local 72, the Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and by that conduct the Respondents have rendered unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

2. By failing and refusing since October 1999 to (1) deduct and remit Local One dues and fees from the wages of unit employees pursuant to valid dues-checkoff authorizations; (2) make the contractually-required contributions to the Pension Funds on behalf of unit employees; and (3) provide and maintain health insurance and dental benefits for unit employees, the Respondents have failed and refused to bargain collectively with the exclusive representative of their employees in violation of Section 8(a)(1) and (5) of the Act. Further, by withdrawing recognition of Local One as the exclusive collective-bargaining representative of the unit on about November 19, 1999, the Respondents also have thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. The Respondents' unfair la-

bor practice affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order the Respondents to recognize and bargain with Local One as the exclusive representative of the unit employees, to comply with the terms of the 1998–2002 collective-bargaining agreement, and to make whole the unit employees for any loss of wages or benefits they may have suffered as a result of the Respondents' failure to comply with the agreement since October 1999, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 52 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, we shall order the Respondents to make all contractually-required contributions to the Pension Funds and to the health insurance and dental benefits plans that they have failed to make since October 1999, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondents shall reimburse unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

Further, we shall order the Respondents to deduct and remit union dues and fees as required by the 1998–2002 collective-bargaining agreement between Respondent Quality and Local One, and to reimburse that Union for the Respondents' failure to do so since October 1999, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Quality Color Graphics, Inc. and American Heatset East Printing, Inc., Bohemia, New York, a single employer, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO as the exclusive bargaining representative of the employees in the following unit:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) Failing and refusing to comply with the 1998–2002 collective-bargaining agreement between Respondent Quality Color Graphics, Inc. and Local One-L by failing to deduct and remit union dues and fees for those employees who have executed valid dues-checkoff authorizations and by failing to make the required contributions to the Pension Funds and to the health insurance and dental benefits plans.

(c) Threatening employees with termination unless they join Local 72, National Organization of Industrial Trade Unions.

(d) Rendering assistance and support to Local 72, National Organization of Industrial Trade Unions by, among other things, informing employees that they would be terminated unless they joined Local 72.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with Local One-L as the exclusive bargaining representative of the unit employees, and comply with the terms and conditions of the 1998–2002 collective-bargaining agreement described above, including the provisions regarding dues-checkoff authorizations and contributions to pension funds and health and dental plans.

(b) Make whole the unit employees for any loss of earnings or benefits they may have suffered as a result of their unlawful failure to comply with the 1998–2002 collective-bargaining agreement since October 1999, with interest, as set forth in the remedy section of this decision.

(c) Make all contractually-required contributions to the Pension Funds and to the health insurance and dental benefits plans that they have failed to make since October 1999, and reimburse unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in the remedy section of this decision.

(d) Deduct and remit union dues and fees as required by the 1998–2002 collective-bargaining agreement, and reimburse Local One for their failure to do so since October 1999, with interest, as set forth in the remedy section of this decision.

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their facility in Bohemia, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 12, 2000

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to recognize and bargain with Local One-L, Amalgamated Lithographers of America, Graphic Communications International Union, AFL–CIO as the exclusive bargaining representative of the employees in the following unit:

> All full-time and regular part-time lithographic production employees in the sheet-fed, electronic prepress and preparatory/prepress departments excluding sales, professional, office and clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT fail and refuse to comply with the 1998–2002 collective-bargaining agreement between Quality Color Graphics, Inc. and Local One-L by failing to deduct and remit union dues and fees for those employees who have executed valid dues-checkoff authorizations and by failing to make the required contributions to the Pension Funds and to the health insurance and dental benefits plans.

WE WILL NOT threaten employees with termination unless they join Local 72, National Organization of Industrial Trade Unions.

WE WILL NOT render assistance and support to Local 72, National Organization of Industrial Trade Unions by, among other things, informing employees that they would be terminated unless they joined Local 72.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with Local One-L as the exclusive bargaining representative of the unit employees, and comply with the terms and conditions of the 1998–2002 collective-bargaining agreement described above, including the provisions regarding dues-checkoff authorizations and contributions to pension funds and health and dental plans.

WE WILL make whole the unit employees for any loss of earnings or benefits they may have suffered as a result of our unlawful failure to comply with the 1998–2002 collective-bargaining agreement since October 1999, with interest.

WE WILL make all contractually-required contributions to the Pension Funds and to the health insurance and dental benefits plans that we have failed to make since October 1999, and reimburse unit employees for any expenses ensuing from our failure to make the required contributions, with interest.

WE WILL deduct and remit union dues and fees as required by the 1998–2002 collective-bargaining agreement, and reimburse Local One-L for our failure to do so since October 1999, with interest.

QUALITY COLOR GRAPHICS, INC. AMERICAN HEATSET EAST PRINTING, INC.